

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

In re:

BRAC GROUP, INC. (f/k/a Budget Group, Inc.),  
  
Reorganized Debtor.

Chapter 11 Case No. 02-12152 (RB)

RE: D.I. 5315, 5325, 5332, 5480

MICHAEL BELGRAVE,

Appellant,

v.

THE PLAN ADMINISTRATOR FOR BRAC  
GROUP, INC.,

Appellee.

Civil Action No. 05-319

**THE PLAN ADMINISTRATOR'S MOTION TO STAY MEDIATION PENDING  
DECISION ON THE PLAN ADMINISTRATOR'S MOTION TO DISMISS APPEAL**

Walker Truesdell & Associates, in its capacity as the Plan Administrator (the "Plan Administrator") for BRAC Group, Inc., the Reorganized Debtor, by and through undersigned counsel, moves to stay mediation of the above-captioned appeal (the "Motion to Stay") until the Court has ruled on the Plan Administrator's Motion to Dismiss Michael Belgrave's Appeal (the "Motion to Dismiss" and the "Appeal," respectively), which is filed contemporaneously herewith. In support of its Motion to Stay, the Plan Administrator respectfully states as follows.

**BACKGROUND**

1. The background of the Appeal is set forth more fully in the Motion to Dismiss. In pertinent part, this is an appeal from the Bankruptcy Court's December 16, 2004 Amended Order Approving Eighteenth Omnibus (Non-Substantive) Objection to Claims Pursuant to Section

502(b) of the Bankruptcy Code, Bankruptcy Rules 3003 and 3007 and Local Rule 3007-1 (the “Amended Order”) (A22-26).<sup>1</sup> Although Federal Rule of Bankruptcy Procedure 8002 requires that an appeal be noticed within 10 days of the entry of the order being appealed, Appellant Michael Belgrave (“Belgrave”) filed his Notice of Appeal from the Amended Order on May 4, 2005 (the “Notice of Appeal”)(A27-80). Because the Notice of Appeal was filed 139 days after the entry of the Amended Order, it is untimely and the Plan Administrator has, accordingly, moved to dismiss this appeal under Federal Rules of Bankruptcy Procedure 8002 and 8011. *See In re Memorex Telex Corp.*, 241 B.R. 841, 843 (D. Del. 1999) (dismissing an appeal that was not timely noticed).

### ARGUMENT

2. The requirement that an appeal from a Bankruptcy Court order be timely noticed is mandatory and jurisdictional. *Id.* Accordingly, the Plan Administrator submits this Court lacks jurisdiction to decide the merits of an appeal that was not timely noticed. Therefore, a motion to dismiss an untimely appeal amounts to a motion to dismiss for lack of subject matter jurisdiction, and should take precedence over the Court’s mediation procedures. *See* Fed. R. Civ. Pro. 12(h)(3) (“*Whenever* it appears . . . that the court lacks jurisdiction over the subject matter, the court shall dismiss the action” (emphasis added)); Fed. R. Bankr. Pro. 8011(b) (providing that a procedural motion raised on an appeal in bankruptcy “may be acted on at any time”).

3. Moreover, it would be a waste of the parties’ and this Court’s time and resources to delay resolution of the Motion to Dismiss until after mediation has been completed. As the order establishing this Court’s procedures for mediating bankruptcy appeals (the “Mediation

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<sup>1</sup> Citations to the record refer to the Plan Administrator’s Appendix, filed contemporaneously with the Motion to Dismiss and the Motion to Stay.

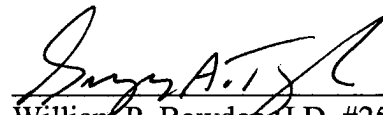
Procedures Order”) recognizes, the purpose of submitting bankruptcy appeals to mediation before the Court considers their merits is to “assist in the expeditious handling of the appeal.” *See In re Procedures To Govern Mediation of Appeals From The United States Bankruptcy Court For This District*, ORDER at 1, 2 (July 26, 2004)(Robinson, C.J.)(Exhibit A hereto). Submitting an untimely appeal over which this Court does not have jurisdiction to mediation would not advance the purpose of the Court’s Mediation Procedures Order.

4. Because this Motion to Stay presents no novel issues of law, the Plan Administrator waives its right to file an opening brief in support of this Motion.

### CONCLUSION

WHEREFORE, the Plan Administrators respectfully request that this Court enter an order in the form attached, (i) granting the Motion to Stay; (ii) directing that this appeal not be referred to the Appellate Mediation Panel until the Court has ruled on the Motion to Dismiss; (iii) suspending deadlines relating to mediation and briefing until the Court has ruled on the Motion to Dismiss; and (iv) granting such further relief as is necessary or appropriate.

ASHBY & GEDDES, P.A.



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-and-

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*Counsel to the Plan Administrator*

Dated: May 27, 2005

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**ORDER GRANTING  
THE PLAN ADMINISTRATOR'S MOTION TO STAY MEDIATION PENDING  
DECISION ON THE PLAN ADMINISTRATOR'S MOTION TO DISMISS APPEAL**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2005, the Court having considered the Plan Administrator's Motion to Stay Mediation Pending Decision on the Plan Administrator's Motion to Dismiss Appeal (the "Motion to Stay") and Appellant Michael Belgrave's response thereto, if any, IT IS HEREBY ORDERED THAT:

1. The Motion to Stay is GRANTED;
2. The above-captioned appeal shall not be referred to the Appellate Mediation Panel until this Court has ruled on the Plan Administrator's Motion to Dismiss Michael Belgrave's Appeal; and

3. Deadlines relating to the submission of briefs, position papers and other documents to the mediator are suspended until this Court has ruled on the Plan Administrator's Motion to Dismiss Michael Belgrave's Appeal.

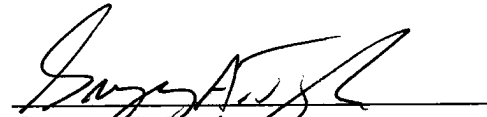
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UNITED STATES DISTRICT JUDGE

157318.1

**CERTIFICATION OF COUNSEL UNDER U.S.D.C.L.R. 7.1.1**

I certify that I attempted to contact Michael Belgrave in order to discuss the subject of the attached motion, but, as of time of filing, he could not be reached.



Gregory A. Taylor

**CERTIFICATE OF SERVICE**

I, Gregory A. Taylor, hereby certify that, on May 27, 2005, I caused one copy of the foregoing **THE PLAN ADMINISTRATOR'S MOTION TO STAY MEDIATION PENDING DECISION ON THE PLAN ADMINISTRATOR'S MOTION TO DISMISS APPEAL** to be served upon the persons listed below in the manner indicated.

**BY FACSIMILE, U.S. MAIL and FEDERAL EXPRESS**

Michael Belgrave  
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Gregory A. Taylor